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SUBJECT: CONSTITUTIONAL COURT REJECTS SENATORS' BID TO DISQUALIFY THAKSIN FROM OFFICE OVER SHINCORP

REF: (A) BANGKOK 922 (B) BANGKOK 788

11. (SBU) Summary: On February 16, The Constitutional Court rejected a petition that had been submitted the day before by 28 senators seeking to have Prime Minister Thaksin disqualified from office for allegedly violating the Constitution through his involvement in the sale of Shincorp to a Singapore company. This represents a serious setback for Thaksin's opponents who have tried to capitalize on the widespread criticism of Thaksin over the sale. This decision, coupled with the political opposition's failure to garner support for a no-confidence vote from disgruntled Thai Rak Thai members, will move the focus of anti-Thaksin activities back to the streets. End summary.

SENATORS CHARGE BASED ON SHINCORP SALE

12. (U) On February 14, 28 senators sent a petition to the Thai Constitutional Court calling for Prime Minister Thaksin's disqualification from office on the grounds that he violated constitutional provisions against holding office in or being a shareholder of a firm or business while holding a minister-level office. The suit was based on the recent sale of Shincorp stock worth some 1.8 billion dollars to the Singapore firm Temasek by the Thaksin family. (ref. B) Thaksin maintains that he divested himself personally of ties with Shincorp before taking office as Prime Minister and that his children were in charge of the decision-making. The senators charge that Thaksin in fact directed the sale of the Shincorp sales in direct violation of Sections 208 and 209 of the 1997 Constitution of Thailand.

WHAT THE CONSTITUTION SAYS

13. (U) The operative sections of the Constitution of Thailand concerned with the senators' suit are:

Section 208. A Minister shall not hold a position or perform any act provided in section 110, except the position required to be held by the operation of law, and shall not hold any other position in a partnership, company, or any organization which engages in a business with a view to sharing profits or incomes or be an employee of any person.

Section 209. A Minister shall not be a partner or shareholder of a partnership or a company up to (note: in violation of) the limit as provided by law. In the case where any Minister intends to continue to receive benefits in such cases, such Minister shall inform the President of the Counter Corruption Commission within thirty days as from the date of the appointment and shall transfer his or her shares in the partnership or company to a juristic person which manages assets for the benefit of other persons as provided by law.

SENATORS CHARGE THAKSIN DIRECTED SHINCORP SALES

14. (U) In short, the senators maintain that the Shincorp sale demonstrated that Thaksin never truly transferred his shares prior to the actual sale and will cite his trip to Singapore in the weeks before the sale of the Shincorp shares to Temasek as evidence that he was directly involved in the decision. If the Court found that the charges were true, Thaksin's ministership would be "terminated."

BUT CONSTITUTIONAL COURT REFUSES TO CONSIDER THE CASE

15. (U) The Court ruled on February 16 that the suit lacked adequate evidence to be considered and formally rejected the senators' bid. The vote was 8-6. According to its announcement, the Court stated that "since the petition failed to evidently prove that any act of the Prime Minister was an act of his having been involved in shareholding or in businesses of a partnership or a company, or his being a partner or shareholder of a partnership or a company up to (note: in violation of) the limit as provided by law, or 2) his failure to inform the President of the National Counter Corruption Commission in the case where he (the Prime Minister) intends to continue to receive benefits in the above cases, the Court therefore ruled that it shall not accept the petition for consideration."

SO BACK TO THE STREETS FOR THAKSIN'S FOES?

16. (SBU) Comment: This decision is a blow to Thaksin's opponents and narrows their options. The Constitutional Court option has been denied and though the Court left room for possible further action if new evidence is uncovered, the initiative is for now dead in the water. The main opposition Democrat Party's (DP) recent attempt to pry away enough disgruntled TRT MPs to allow a no-confidence vote against Thaksin foundered when disaffected TRT faction leader Sanoh Thienthong declined to join in the DP's effort. A week-long campaign to gather 50,000 signatures to catalyze an impeachment procedure is moving along slower than expected and could stretch on for months as names are counted, identities verified and residencies established. The Constitutional Court's decision will now move the focus of anti-Thaksin activities back to the streets (ref. A)
BOYCE